

REMARKS

Claims 1-9, 11-29, 31-37 and 39-50 are in the case. Claims 1, 11, 19-21, 22, 29, 31, 33, 42 and 44 are currently amended. Claims 10, 30, 38 and 46 have been cancelled. No new matter has been introduced. Support for the language added to claims 1, 29 and 41 is found, for example, at Paras [0038-0040] of Applicant's published application (US 2004/0132367). Support for the amendment of claims 19 and 20 is found in Para [0032] of the published application.

In the present office action, claim 50 is allowed, and claims 21, 22, 46 and 47 are objected to as being dependent from a rejected base claim. In response, claims 21 and 22 have been rewritten in independent form to include all of the limitations of the base claim (claim 1) and any intervening claims (claims 19 and 20). Independent claim 44 has been rewritten to include all of the limitations of claim 46. It is submitted that claims 21, 22, as well as claims 44, 45 and 47-49 are now all in condition for allowance.

Claims 1, 2, 5, 6, 8, 10-12, 29-31, 33, 34, 38 and 41 have been rejected under 35 U.S.C. 102(b) as being anticipated by Kuznetz (U.S. 4,569,874).

While Applicant does not concede that this rejection is proper, in order to expedite prosecution Applicant has amended claims 1, 29 and 41 to recite that the first portion comprises a lower portion of the outer shell garment and the second portion comprises an upper portion of the outer shell garment, and that the first, lower portion of the outer shell garment is transmissive of water vapor and a predetermined through-flow of air, relative to the second, upper portion, while repelling liquid water, and the second, upper portion of the outer shell garment is substantially non-transmissive of liquid water and through-flow of air, relative to the first, lower portion. Applicant respectfully submits that this combination of features is neither taught nor suggested by Kuznetz '874. In Kuznetz '874, the entire garment is formed of the same material, and thus the garment does not include a first, lower portion and a second, upper portion with the contrasting features of Applicant's invention, as now more clearly claimed.

Claims 3, 4, 35 and 36 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznetz '874 in view of Shinkai et al. (U.S. 5,308,689). Applicant respectfully submits that

the independent claims, and the claims which depend therefrom, are patentable over these references, whether taken alone or in combination. Shinkai et al. '689 does not supply a teaching or suggestion of an outer shell garment a first, lower portion and a second, upper portion with the contrasting features of Applicant's invention, as now more clearly claimed.

Claims 19, 20, 23, 24, 44, 48 and 49 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznetz '874 in view of Gioello (U.S. 5,515,543). Applicant respectfully submits that claim 1, from which claims 19, 20, 23 and 24 depend, is patentable over these references, whether taken alone or in combination. Furthermore, as now more clearly claimed, according to Applicant's invention of claims 19, 20, 23 and 24, the region of channels is constructed within a raised or pile surface of the thermal layer. Gioello '543 is cited to supply teaching of a fabric having a channeled region; however, in Gioello '543, the channels are formed by ribs, e.g. of fiber filled cord or foam (col. 2, lines 1-2) with a diameter of 1/8-inch to 2 inches (col. 7, lines 44-45) attached upon the surface of the surface of a porous layer, e.g. by stitching, application of heat, bonding by adhesives, lamination or extrusion (col. 1, line 66-col. 12, line 3). Thus, Gioello '543 does not teach or suggest important features of Applicant's invention, as now more clearly claimed.

Claims 17, 18, 26 and 27 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznetz '874 in view of Applicant's own disclosure. These claims are patentable for at least the reason that they depend from a patentable base claim.

Claims 1, 2, 5, 7, 9, 15, 25, 29, 40 and 41 have been rejected under 35 U.S.C. 103(a) as being unpatentable over King et al. (U.S. 6,018,819) in view of Kuznetz '874. Claims 1, 29 and 41 have been amended to recite that the first portion comprises a lower portion of the outer shell garment and the second portion comprises an upper portion of the outer shell garment, and the first, lower portion of the outer shell garment is transmissive of water vapor and a predetermined through-flow of air, relative to the second, upper portion, while repelling liquid water, and the second, upper portion of the outer shell garment is substantially non-transmissive of liquid water and through-flow of air, relative to the first, lower portion. There is no suggestion in either reference for this combination of features as taught and now more clearly claimed by Applicant.

The proposal by the Examiner for selectively modifying the teaching of King et al. '819 to make the first (upper) panel waterproof, rather than water resistant as taught, because "it is just as easy" to do so represents impermissible use of hindsight, with no teaching or suggestion in the prior art, but instead employing Applicant's invention as a guide. More specifically, in King et al. '819, the upper and lower panels are both described as "water resistant." Similarly, in Kuznetz '874, the entire garment is formed of a single material. Thus neither Kuznetz '874 nor King et al. '819 provides teaching or suggestion for an outer shell garment in which the first, lower portion is water repellant while the second, upper portion is waterproof.

Claim 28 has been rejected under 35 U.S.C. 103(a) as being unpatentable over King et al. '819 in view of Kuznetz '874 and further in view of Maeshima (U.S. 4,470,155), and claims 13, 14, 41 and 42 have been rejected as unpatentable over these references further combined with Senser (U.S. 5,077,838¹). Applicant respectfully submits that these further references fail to teach or suggest the combination of features found lacking above, and that these claims are therefore patentable for at least the same reasons already discussed with respect to King et al. '819 combined with Kuznetz '874.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reason for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to amendment.

¹ The Office action as mailed cites U.S. Patent No. 4,554,682, which references a patent by Hillquist that does not comport with the language cited by the Examiner. In a brief telephone interview on November 29, 2006, the Examiner graciously reviewed his notes and confirmed that the intended citation is as indicated above, i.e. to Senser U.S. Patent No. 5,077,838. Correction of the record is requested, if not already addressed.

Applicant : Moshe Rock
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Please apply the fee of \$400.00 for additional independent claims, and apply any other charges or credits, to deposit account 06-1050, referencing Attorney Docket No. 10638-057001.

Respectfully submitted,

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/Celia H. Leber/
Celia H. Leber
Reg. No. 33,524

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

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